IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 610 of 1998

with

CRIMINAL APPEALS No 624, 634, 664 & 692 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURENDRA KATHADBHAI JEBALIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 610 of 1998
   MR SV RAJU for ANSHIN H DESAI for Petitioner No. 1
   MR RJ GOSWAMI for the Appellant.
   MR SS PATEL, APP, for the respondent.
2. Criminal Appeal No. 624 of 1998
   MR MB AHUJA for the Appellant
   MR ASIM J PANDYA for Respondent No. 1

MR SS PATEL, APP, for respondent No.2.

3. Crminal Appeal No.634 of 1998

MR BB NAIK for the Appellants

MR ASIM J PANDYA for respondent No.1

MR SS PATEL, APP, for respondent No.2.

4. Criminal Appeal No.664 of 1998

MR YF MEHTA for the Appellant.

MR ASIM J PANDYA for respondent No.1.

MR SS PATEL, APP, for respondent No.2

5. Criminal Appeal No.692 of 1998

MR HN JHALA for the Appellants.

MR SS PATEL, APP, for the respondent.

CORAM : MR.JUSTICE A.L.DAVE
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 20/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. These Criminal Appeals arise out of a common judgment and order rendered by learned Additional City Sessions Judge, Court No.10, Ahmedabad, in Sessions Cases No.236 of 1994, 72 of 1995, 297 of 1995 and 160 of 1996 on May 14, 1998, recording conviction under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short). As the Sessions Cases arose out of the same incident and transaction, they were tried together. Likewise, as these appeals arise out of the same judgment and order, they are tagged and heard together and are disposed of by this common judgment.

1.1 Criminal Appeal No.664 of 1998 is preferred by Shantilal Haridas Patel alias Katori, who was accused No.1 before the Trial Court.

1.2 Criminal Appeal No.692 of 1998 is preferred by Haji Suleman Khafi, Dinesh Alabhai Dhruv alias Diniyo, Jusab Razak Ali Sidi alias Dado, Khemraj Amrabhai Gadhvi and Gafar Suleman Khafi, who were original accused Nos.2, 3, 4, 5 and 10, respectively.

1.3 Criminal Appeal No.634 of 1998 is preferred by Sidu Husen Sida and Chhagan Haribhai Kuchhadia alias Langdo, where were accused Nos.6 and 8, respectively.

1.4 Criminal Appeal No.624 of 1998 is preferred by Chandrakant Ishwarlal Acharya, who was accused No.7

before the Trial Court.

1.5 Criminal Appeal No.610 of 1998 is preferred by Surendra Kathadbhai Jebalia, who was accused No.9 before the Trial Court.

2. The appellant in Criminal Appeal No.664 of 1998 is represented by learned Advocate, Mr. Y.F. Mehta; the appellants in Criminal Appeal No.692 of 1998 are represented by learned Advocate, Mr. H.N. Jhala; the appellants in Criminal Appeal No.634 of 1998 are represented by learned Advocate, Mr. B.B. Naik; the appellant in Criminal Appeal No.624 of 1998 is represented by learned Advocate, Mr. M.B. Ahuja; and the appellant in Criminal Appeal No.610 of 1998 is represented by learned Advocate, Mr. S.V. Raju.

2.1 Directorate of Revenue Intelligence is represented by learned Additional Central Government Standing Counsel, Mr. Asim Pandya, whereas the State of Gujarat is represented by learned Additional Public Prosecutor, Mr. S.S. Patel.

3. On basis of intelligence collected and developed by the officers of the Directorate of Revenue Intelligence, Ahmedabad ("D.R.I." for short), a watch was organized in Junagadh district and on interception of trucks bearing No.GJ-3-U-4022 and GJ-10-T-8517 in the early morning hours of 11.5.1994, a large quantity of methaqualone tablets (5225.300 kg. approximately), commonly known as "mandrax", was seized, which has, ultimately, led to prosecution and conviction.

3.1 As per the prosecution case, an Intelligence was received on 8.5.1994 by the officers of Ahmedabad office of D.R.I. to the effect that one Haji Ismail Shumbhania of Salaya, then residing at Dubai, was attempting to export about one and a half truck load of mandrax tablets. The consignment of mandrax tablets was, at that time, stored at some Wadi situate somewhere near Junagadh. The safety, storage and transport of the consignment was managed by Chhagan Haribhai Kuchhadia alias Chhagan Langdo, a known smuggler of Probandar, Chandrakant Ishwarlal Acharya, another known smuggler of Ahmedabad, Batuk Bapu, a well-known figure in Junagadh transport circle and his brother-Surendra Bapu of Junagadh. The Intelligence further revealed that the consignment was to be transported from Junagadh area to Mangalore on the 9th or 10th May, 1994 in two trucks bearing registration No.GJ-3-U-4022 and GJ-1-T-8517. The said trucks were to be provided by Ali Suleman Khafi and

Haji Suleman Khafi of Jamnagar. The trucks were to be manned by Jusab Razak Ali Sidi alias Dado and Dinesh Alabhai Dhruv alias Diniyo, the two trusted men of Ali Suleman Khafi. The cargo was likely to be covered with consignment of garlic to be purchased from the local market. The said information received by the officers of D.R.I., Ahmedabad, was reduced into writing and was forwarded to the Assistant Director, D.R.I., Zonal Unit, Ahmedabad. Following this intelligence, action was initiated by the D.R.I. officers directing officers from Ahmedabad and Jamnagar to reach Junagadh and follow further directions. Accordingly, officers organized a watch as per directions given from time to time. Considering the intelligence, a watch was also kept at the Bridge on Narmada river, near Jhadheshwar/Bharuch to ensure that the consignment does not escape as the location in Junagadh district was not exactly known and the route was also not known. One of the trucks was identified and after some time, the second truck was also identified near Junagadh and, ultimately, both the trucks came to be intercepted on 11.5.1994 in early morning hours around 6.30., near Navagadh Bridge. Accused Nos.3, 4, 5 and 6 were found in the truck. The trucks were apparently carrying wheat, which was covered with a tarpaulin. On inquiries being made by the officers of D.R.I., they were informed that the trucks carried consignment of wheat and, for that purpose, requisite documents were also shown. However, because of the intelligence, the officers insisted for inspection and, on inspection, it was found that 22 drums/barrels in each of the trucks were concealed beneath the bags containing wheat. The barrels were heavy and were meant for transhipment of oil with a capacity of 200 litres each. Accused Nos.3, 4, 5 and 6 could not furnish any documents relating to the barrels nor could they tender any explanation therefor. On being interrogated, it was revealed that the drums were being transported without any document and accused No.3 disclosed before the officers of D.R.I. that they were asked to go to Junagadh to load the barrels and Batuksinh of Shyam Transport of Junagadh, would arrange for the papers. They were asked to load the barrels and then cover them up with wheat bags as there would be no documents for the barrels. They were also asked to get in touch with one Hajibhai of Bombay at a particular telephone number after reaching Mangalore, who would then give them direction as to what is to be done with the barrels. Having regard to the statements and having found the barrels to be very heavy and carrying suspicious material, the officers of D.R.I. decided to take the trucks to Jamnagar office of D.R.I., as inspection of the barrels was not possible on

the road for want of implements, etc. The entire transaction was recorded in a Panchnama drawn in presence of Panch witnesses-Jagdish Govindbhai Gondalia and Bharat Babulal Mer, both of Jetpur, district Rajkot and the trucks were, accordingly, taken to the D.R.I. office at Jamnagar. On reaching the D.R.I. office, at Jamnagar, around 11.00 A.M. on 11.5.1994, the mouth of the barrels were opened to find black coloured oil like substance. A rod was inserted into the mouth, but it was found that the rod could not move diagonally due to a partition like obstruction. Therefore, the top lid of the barrel was cut open and it was found that the drums were specially designed and fabricated with a barrel like compartment just under the mouth of the barrel and the rest of the barrel formed another compartment, which contained mandrax tablets packed in polyethylene bags in a large quantity. The plastic bags containing the mandrax tablets were put in that compartment with white powder as packing and to prevent movement of the packets. A primary test was conducted to find that the tablets were methaqualone tablets (mandrax). Each of the 44 barrels was thus opened and all of them were found to carry mandrax tablets. Samples were taken out and sealed in different packets, in a way that they maintain their individual indentity with respective barrels. Samples were sealed. The remainder of the contraband was also properly sealed and weighed. It is recorded in the Panchnama that the sealing was done in a manner which would leave no scope for any tampering without damaging the wax seal. The weight of the mandrax tablets seized from one truck was 2597.300 kgs. and from the other, it was 2628.000 kgs. Thus, total weight was 5225.300 kgs. The Panchnama containing all details was then concluded. The seized samples of mandrax tablets were sent to the Forensic Science Laboratory (FSL) and the FSL, after analysis, gave a clear opinion that the tablets were methaqualone tablets (mandrax), a psychotropic substance. The officers of D.R.I., while inquiring into the matter, recorded statements of accused Nos.3, 4, 5 and 6 and, thereafter, all the other accused persons under Section 67 of the NDPS Act. It was revealed that the barrels containing tablets were brought from some place near Bulsar Industrial Estate and were to be exported by sea route from some place near Jafrabad in Saurashtra area. However, by the time the tablets were brought to Jafrabad, the situation changed and it was found not possible to export the tablets through that channel. It was then decided to transport the contraband consignment to Mangalore by road and to export therefrom. During this period, the barrels were preserved for some days in the Wadi of one Faridbawa, near Dholka and then in the

Wadi of Virawala Bhimawala, near Junagadh. It was during the course of transport to Mangalore that the trucks were intercepted and contraband seized. It was found that the transaction was the outcome of a conspiracy hatched by the accused persons and others at Ahmedabad. The D.R.I., therefore, lodged complaint/complaints against the accused persons and, ultimately, they came to be tried by the learned Additional City Sessions Judge, Court No. 10, Ahmedabad, for offences punishable under Sections 21, 22 and 23 read with Section 29 of the NDPS Act and Section 120-B of the Indian Penal Code.

4. After considering the evidence led by the prosecution, the learned Additional City Sessions Judge came to a conclusion that the prosecution could successfully prove the charges against the accused persons for offence punishable under Section 22 read with Section 29 of the NDPS Act and Section 120-B of the Indian Penal Code and recorded their conviction.

4.1 All the accused persons came to be convicted for offence punishable under Section 29 of the NDPS Act and are sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lakh, in default, to undergo further imprisonment for a period of one year.

4.2 Accused Nos. 1, 3, 4, 5 and 6 came to be convicted for offence punishable under Section 22 of the NDPS Act and are sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lakh, in default, to undergo rigorous imprisonment for six months.

4.3 Accused Nos.9 and 10 came to be convicted under Section 22 of the NDPS Act and are sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of Rs.2 lakhs, in default, to undergo rigorous imprisonment for two years.

4.4 Accused Nos.2, 7 and 8 are convicted under Section 22 of the NDPS Act and are sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 5 lakhs, each, in default, to undergo rigorous Rs. 5 lakhs, in default, to undergo R.I. for three years.

4.5 It is against the said judgment and order that these appeals are preferred.

5. We have been taken through the record and proceedings of the Trial Court and the learned Advocates for the appellants have canvassed various points to

support the appeals. They have also relied on various decisions of the Apex Court as well as High Courts to derive support for the contentions raised.

6. The judgment and order of the Trial Court is assailed mainly on following grounds :-

A. There is non-compliance of mandatory requirements of Section 42(2), 55 and 57 of the NDPS Act.

B. The prosecution evidence regarding sealing and seizure of the material and safe custody of the samples is not trust-worthy.

C. Evidence in form of statements of accused persons recorded under Section 67 of the NDPS Act suffers from the defect of having been obtained under duress and compulsion. They cannot make the sole basis of conviction. The provisions contained in Section 67 of the NDPS Act is only an empowering provision so far as the officers are concerned. The statements could not have been considered by Trial Court in light of the provisions contained in Section 24 of the Evidence Act and the constitutional guarantee of Article 20 (3) of the Constitution of India.

D. The Search and Seizure Panchnama is not reliable as the manner in which the Panchnama is drawn makes it prone to tampering and renders it doubtful.

E. The quality of the investigation is very poor. The investigation cannot be considered as independent, unbiased or fair. There is no probing on source of supply or place of manufacture of mandrax. The persons involved in the racket are not prosecuted. Independent evidence, though available, has not been collected. The appellants are falsely implicated.

F. The evidence of the prosecution mainly is in form of statements of the accused under Section 67 of the NDPS Act. Even if those statements are accepted at the face value, they do not indicate any material to show that the accused persons had conscious possession or knowledge about the transhipment of the psychotropic substance-mandrax. They, therefore, cannot be convicted under the NDPS Act. At the most,

knowledge can be attributed for transport of some illegal material.

G. The charge against the appellants and the findings are contrary to each other.

7. It was contended that there is non-compliance of Section 42 (2) of the NDPS Act. In this regard, it was contended that, although the prosecution has tried to show that there was compliance of Section 42(2) of the NDPS Act by placing on record Ex.72, which is the information received and forwarded to the immediate superior of the receiving officers of D.R.I., the evidence of the prosecution is contradictory and does not inspire confidence. The officers come out with different versions. Whether the information was received on telephone or personally from the informant and whether it was reduced into writing is not clearly established because one officer comes out with a case that it was written down in hands, whereas Ex.72 is a typed version and, therefore, the case of the prosecution regarding compliance of Section 42(2) is doubtful.

7.1 It was contended that there is non-compliance of Section 55 of the NDPS Act. It was contended that there is no evidence regarding safe custody of the muddamal samples during the period after seizure and sending of the muddamal to the FSL. All that is stated by the officer is that it was with him, but where had he kept it, whether it was kept in lock and key and whether it was properly sealed or not is not stated. It is contended that the evidence has come to the effect that the store room was not used and, therefore, the mandatory requirement of Section 55 is not complied with.

7.2 Section 57 of the NDPS Act requires that, on seizure and arrest, superior officer is required to be informed within 48 hours. It was contended that this requirement has been held to be mandatory by the Apex Court. There is no evidence to indicate its compliance. An attempt was made to show compliance of Section 57 by producing a communication at Mark 58/44, but the Trial Court has not permitted that document to be taken on record as it was not coming from proper custody. It was contended that, even if it is exhibited, it does not comply with the requirements of Section 57 of the NDPS Act, as it speaks of only the seizure. There is total non-compliance so far as reporting of arrest is concerned. The accused persons have been arrested on various dates and no report in respect of their arrest has been sent to the immediate official superior and,

therefore, there is non-compliance of Section 57 of the NDPS Act.

7.3 It was contended that the evidence regarding seizure and sealing of the muddamal is doubtful. The procedure followed for sealing is such that tampering cannot be ruled out. Slips containing signatures of the Panch witnesses were not properly fixed to the samples and the seal was not applied in a manner which would rule out the possibility of tampering of samples at the hands of the officers. It was contended that one sample from each of the barrel taken would make 44 sample packets and one sample of oil from drums from each of the trucks was taken and that would make in all 46 samples. It is the case emerging from the evidence of D.R.I. Officer, Patel, that four packets were received by him through Mr. Dimri for being delivered to the F.S.L. The F.S.L. receipt and the report speaks of 46 samples. This contradiction is not explained by the prosecution.

7.4 It was contended that the statements under Section 67 of the NDPS Act which form major part of the evidence and which have been relied upon by the Trial Court for recording conviction suffers from various defects. It was contended that the statements are not voluntary and free statements. They are obtained under threat and duress. The accused persons were kept under prolonged illegal detention although an attempt is made to show that they were obtained by serving summons on various dates. In such state of psychological pressure and tension, repeated statements were recorded till they gave inculpatory statements. The statements are, therefore, not voluntary. It was also contended that the statements are retracted by the accused persons subsequently. Some of them have even complained of having meted out with physical and mental torture, which would show that they were not voluntary.

7.4.1 It was also contended that the statements under Section 67 of the NDPS Act could not have been relied upon as they would be hit by the constitutional guarantee envisaged under sub-article (3) of Article 22 of the Constitution and also by protection provided by Section 24 of the Evidence Act. The statements are recorded after some of the accused assumed the character of an accused or after some of them have been shown as accused in the complaint or in the summons served on them.

7.4.2 It was contended that, in each of the statements recorded under Section 67 of the NDPS Act, it is specifically written that the accused persons were given

to understand that they are bound to give correct information to the interrogating officer and, if they give incorrect information, they can be prosecuted under the Indian Penal Code. It was contended that this itself is a threat because, unlike Section 108 of the Customs Act, Section 67 does not contain any provision which requires a person to give correct statement or which indicates that the inquiry assumes the character of a judicial inquiry.

7.5 It was further contended that the Panchnama under which the material was seized cannot be relied upon because although the Panchnama was started at the place where the trucks were intercepted on the highway and after finishing the work at that place, trucks were taken to Jamnagar office of D.R.I. No signature of the Panch witness is taken, at that stage. It is also contended that the evidence of the Panch witness indicates that he was in the D.R.I. office while the drums were opened and samples were drawn in the compound of the D.R.I. office at Jamnagar. Differently put, the sampling process was conducted in the compound of the D.R.I. office whereas the Panch witnesses were sitting in the office room. The entire proceedings were, therefore, in absence of Panch witnesses.

7.6 The quality of investigation was seriously assailed on behalf of the appellants. It was contended that the prosecution has not prosecuted the persons found to be involved in the racket. Faridbava is one of such persons in whose Wadi the contraband was concealed. It was further contended that the D.R.I. officers have not even attempted to make any probe into the source of supply of the material, no attempt is made to know where the drums were manufactured or the drug was manufactured and no attempt is made to collect independent evidence though it was available in form of diesel bills, statement of pump owner, the register of the hotel where the accused persons had stayed under fake names, etc. It was also contended that the statements of the D.R.I. officers, who were party to the watch, search and seizure, were not recorded and, therefore, prejudice is caused to the accused persons as they were not aware as to what the officer is going to depose against them. It was, therefore, contended that the investigation is of a very poor quality and it cannot be considered as independent, unbiased or fair.

7.7 It was contended that the accused persons cannot be said to have conscious possession of the mandrax tablets. Even if the statements under Section 67 of the

NDPS Act are accepted at the face value, it was contended that the statements do not reveal anything to show that the accused persons were aware of the contents of the drums. All that emerges from the statement is that, they had felt that they were transporting something against the law and, therefore, they could not have been convicted for offence punishable under the NDPS Act.

7.8 It was contended that, as per the case against the appellants, the entire transaction had 'Dubai Connection' and was the result of conspiracy with Haji Ismail of Dubai. There is no evidence in that regard. The person from Dubai is not prosecuted. The conviction for conspiracy is, therefore, bad in law.

7.9 A large number of decisions were relied upon by the learned Advocates for the appellants in support of their various contentions, which would be discussed during the course of discussion of the contentions raised before this Court.

8. The appeals have been vehemently opposed to by learned Additional Central Government Standing Counsel appearing for the D.R.I. Countering the contentions raised by the appellants, it was submitted that, so far as compliance of Section 42(2) is concerned, exhibit 72, if read, would clearly show that the intelligence gathered was gathered and developed by the D.R.I. Zonal unit and it was immediately made over to the Assistant Director by Mr. Bakarawala and Mr. Wellington on 8.4.1994 itself. It was received by the superior, as can be seen from the endorsement made by him under his signature, on the very same day. It was submitted that, not only that, but action was taken upon the information and, therefore, merely because there is some lapse or mistake on the part of the officers in giving exact details in cross-examination, it cannot be said that there was non-compliance of Section 42(2) of the NDPS Act. It was submitted that contemporaneous record cannot be falsified or made doubtful by some such mistake that may have crept in because of lapse of time or the concerned officer not understanding the questions in its perspective.

8.1 It was submitted that so far as Section 55 is concerned, it cannot be said that it is required to be complied with. He submitted that P.W.1 has stated that the seized goods were packed in a carton of hardboard separately and he sticks to his version during cross-examination as well. Mr. Pandya submitted that neither P.W.2 nor P.W.3 was put any question regarding

the seized goods. Mr. Pandya submitted that the muddamal was never sent to the police and, therefore, Section 55 cannot be said to be attracted. P.W.4 has, in terms, stated that the samples were taken by him in his custody and that the muddamal remained in the office for 3-4 days. There is evidence to indicate that the muddamal was received by the F.S.L. in a sealed and untampered condition. No prejudice, therefore, can be said to have been caused to the accused.

8.2 As regards compliance of Section 57 of the NDPS Act, it was submitted that the Trial Court committed an error in not accepting the document on record . P.W.4 had produced communication dated May 13, 1994 at Mark 58/44. It was addressed to the Deputy Director, Ahmedabad, Mr. Singla. The said letter refused to be taken on record by the Trial Court on the ground that it is addressed to the Deputy Director and no one from that office has produced this. It was contended that since the original complainant is the D.R.I. office, Ahmedabad, it is always possible for P.W.4 to obtain original document from Ahmedabad office and to produce it before the Court. A suggestion in the cross-examination to P.W. 4 has been denied regarding non-compliance of Section 57. P.W.21 has, in terms, stated in his cross-examination that the seizure was reported to him. Reliance was placed on certain judicial pronouncements to show that Section 57 is directory in nature and violation of this provision would not ipso facto vitiate the trial or conviction.

8.3 As regards the sealing, seizure and handling of the muddamal, it was submitted that the Panchnama and the oral evidence in support of the Panchnama clearly indicate that each of the samples was put in an envelope which was wrapped with a slip containing the signatures of the Panch witnesses and the accused persons. Thereafter, it was tied with cotton ribbon and the ends of the cotton ribbon was sealed with sealing wax. This was done in a manner which would eliminate the chance of any tampering and, therefore, the doubts raised by the appellants are only marginal.

8.3.1 As regards the contention on number of packets, Mr. Pandya submitted that the samples were in all 46, but the 22 packets from the barrels seized from each of the trucks were put in one cover. That made two envelopes and the two oil samples together made four envelopes. If the F.S.L. report is seen, it clearly indicates existence of 46 samples. It was submitted that the F.S.L. report does not speak of any tampering. If

there was any tampering, it would have been indicated by the F.S.L. and it was, therefore, submitted that the sealing and sampling was properly done and properly appreciated by the Trial Court.

8.4 As regards Section 67, it was submitted that only accused Nos.1, 7 and 8 made a complaint to the Magistrate that their signatures had been obtained by giving ill-treatment or by exercising coercion, threat and pressure. The rest of the accused have not retracted their statements till their statements under Section 313 of the Code of Criminal Procedure were recorded at the trial. No evidence is led by the accused to show any ill-treatment by the officers of D.R.I. while recording statements under Section 67 of the NDPS Act. It was submitted that onus is on person retracting his statement to prove ill-treatment or coercion alleged and a bald allegation would not be sufficient to render such statements unbelievable. It was submitted that, even on basis of statements under Section 67, conviction can be founded because in such pre-planned white collared crimes, there cannot be any independent evidence to support or corroborate involvement of the accused persons.

8.4.1 It was contended that provisions contained in Articles 20(3) of the Constitution of India and Section 24 of the Evidence Act will not be attracted in the instant case. Accused Nos. 7, 8, 9 and 10 have not been indicated as accused in the complaint when their statements were recorded under Section 67 of the NDPS Act. Mere mention of name of a person in the body of the complaint and broadly stating the role attributable to him cannot make him an accused. In support of this contention, reliance was placed on certain judicial pronouncements. It was submitted that there is no material to indicate that the accused persons were detained illegally for a prolonged time and their statements were recorded repeatedly till they gave inculpatory statement. Mr. Pandya submitted that the contemporaneous record shows that the accused persons were served with summons on every occasion. There is no reason to doubt this aspect. It is only as an after thought that this defence is raised. Mr. Pandya submitted that repetitive statements by themselves cannot be considered as a ground to infer a pressurising technique. In such cases, tactful and expertised interrogation only brings out the truth from the mouth of the accused. Persons involved in such criminal activity would not disclose their involvement easily at the first instance. It is only on adopting tactful and a

specialised method of interrogation that the persons blurt out the correct details. It was submitted that the contention regarding coercive procurement of statements cannot be accepted.

8.4.2 It was submitted that, it is true that there is a difference between the provisions contained in Section 108 of the Customs Act and Section 67 of the NDPS Act. But, otherwise also, when an officer is empowered to ask for information, the person from whom the information is asked is bound to give correct information. Otherwise, the empowering provision would be rendered nugatory or redundant. It was submitted that the power or right is always accompanied by corresponding duty and when an officer is empowered to call for certain information, the person from whom the information is called for is in duty bound to give correct information. Mr. Pandya placed reliance on Section 177 of the Indian Penal Code to derive support for this contention of his.

8.5 It was contended that the seizure Panchnama was a running Panchnama and there was no question of obtaining signature of the Panch witnesses at the place of interception because the Panch witnesses went together with the truck to the office of the D.R.I., at Jamnagar and, they had remained present all through out the drawing of the samples, etc. He submitted that the interpretation sought to be given to the evidence is too technical. When a man says that he was in the office, it would include the precincts of the office as well. Therefore, when the Panch says that the samples were drawn in the compound and that he was in the office, he means that he was very much present at the place where the samples were drawn and, therefore, the Panchnama and the drawing of samples may not be doubted.

8.6 Regarding the quality of investigation, it was submitted that the D.R.I. officers are not police officers and cannot record statements of witnesses as contemplated under Section 161 of the Code of Criminal Procedure. All possible evidence is collected. A lapse here or there in collecting the evidence will not negative the effect of what is collected by the D.R.I. officers against the accused persons. It was submitted that the evidence collected by the D.R.I. officers indicated non-involvement of certain persons and, therefore, they have not been prosecuted. It was submitted that, even if such persons are not prosecuted wrongly, that cannot benefit the persons who are involved in the offence and are prosecuted.

8.7 Lastly, it was submitted accused Nos.3, 4, 5 and 6 were found in possession of the contraband. It was concealed under wheat bags. They were all conscious about the fact that some illegal activity is being done. Accused Nos.3, 4 and 5 have their antecedents and are trusted men of the transport operators as well as kingpin involved in the racket. So far as accused No.6 is concerned, it was submitted that he is from Junagadh and he admits the fact that he was aware that he was transporting something illegal. No person would run the risk of involving in transport of illegal material unless he is conscious about the nature of such material. He was specially called for from Junagadh, which indicates that he must be a trusted man. It was, therefore, submitted that, he has been rightly convicted and the contention regarding lack of conscious possession may not be accepted.

8.8 Learned Central Government Standing Counsel placed reliance on various judicial pronouncements in support of his various contentions.

9. We have gone through the record and proceedings and have examined the case in light of the contentions raised before us by the learned counsel for parties. In order that the contentions to be dealt with by us can be better appreciated, certain relevant facts need to be stated.

9.1 Against accused Nos.1, 2, 7, 8, 9 and 10, there is no inculpatory oral evidence other than statements under Section 67 of the NDPS Act. They are mainly charged to have hatched and assisted the conspiracy of procurement and smuggling of mandrax tablets.

9.2 Accused Nos.3, 4, 5 and 6 were found to be in the trucks containing contraband mandrax when the trucks were intercepted. Apart from their statements under Section 67 of the NDPS Act, there is evidence of witnesses, who intercepted the trucks and found the contraband concealed beneath wheat bags in barrels specially designed and fabricated to camouflage as if the barrels contained oil.

9.3 Accused Nos.1, 7 and 8 have made complaint of ill-treatment on their production before the Magisterial Court and there is material to show that they were sent for medical check up/treatment. However, no evidence, as to what was found by the doctor in respect of the allegation of physical violence and ill-treatment, has come on record.

9.4 All the accused persons retracted their statements before the Trial Court in their statements under Section 313 of the Code of Criminal Procedure.

9.5 The evidence can be divided into three parts broadly - (1) the statements under Section 67 of the NDPS Act; (2) the depostions of D.R.I. officers - Panch witnesses; and (3) Panchnama and FSL report.

9.6 A relevant factor would also be the fact that accused Nos.7, 8, 9 and 10 could be arrested after a long time, namely, accused Nos.7 and 8 were arrested on the 12th December, 1994, (after 7 months), accused No.9 was arrested on the 5th June, 1995, (after 13 months) and accused No.10 was arrested on the 26th March, 1996, (after 22 months).

9.7 None of the appellants challenge the opinion of FSL that the samples were of Mandrax Tablets, a Psychotropic substance. Though sampling and sealing aspects are challenged to show possibility of tampering.

10. The first contention regarding non-compliance of Sections 42(2), 55 and 57 of the NDPS Act has been closely examined by us. As regards non-compliance of Section 42(2) of the NDPS Act, we find that, on the 8th May, 1994 itself, the day of which the information/intelligence is gathered, a report has been made to the Assistant Director, Mr. V.P.C. Rao, Zonal Unit, Ahmedabad (DRI), giving all details by Mr. Bakarawala and Mr. Wellington, who are Intelligence Officers. The said report is at Ex.72. An endorsement is made by Mr. Rao on 8.5.1994 itself to the effect that he had seen it and discussed it. It has come in evidence that, pursuant thereto, action was initiated for organizing a watch for intercepting the vehicles. However, much was argued about the depositions of witnesses Mr. Bakarawala and Mr. Denial Rajkumar.

10.1 Mr. Denial Rajkumar has been examined at Ex.57 as P.W.1. He was working as Intelligence Officer at D.R.I., Ahmedabad, around the time of incidence. He says that on 8.5.1994, he and his colleague-Bakarawala received intelligence to the effect that trucks bearing No.GJ-10-T-8517 and GJ-3-U-4022 are to transport consignment of mandrax from Junagadh to Mangalore and that the consignment belongs to Haji Haji Ismail of Salaya, then residing at Dubai. He also says that there was intelligence regarding Chhagan Haribhai Kuchhadia and Chandrakant Acharya monitoring the transaction, and one Batukbhai and Surendrabhai were to transport the

contraband. The said trucks were to be driven by one Dado and Diniyo. The consignment would be covered by onion or garlic. The information was written down by Bakarawala and then handed over to Deputy Director, Mr. Rao of D.R.I., Ahmedabad. He has been cross-examined on this point where he says that the information was received by him on telephone and it was somebody not from Ahmedabad. In further cross-examination, he accepts the suggestion that the information was received from some officer of D.R.I. and he says that he had not verified about the correctness of the information. He also says that he had not written it down. He says that by that, he means that he had not immediately written down. He says that the information was received in English. He agrees that he had not written down the information. He says that the information was passed over by him to his colleague-Bakarawala. He had informed Bakarawala in English, which was written down by Bakarawala, which he had seen himself. It was written in English. He says that it was signed by him and Bakarawala both. He says that when this information was given to Mr. Rao, he was present. The information was passed over to Mr. Rao within 45 minutes of Bakarawala writing down the same. He says that copy of the information received was not maintained.

10.2 Mr. Bakarawala is examined as P.W.2 at Ex.71. In examination-in-chief, he says that the intelligence was received by him and Denial Rajkumar both. He says that the information was typed out by him and signed by him as well as Denial Rajkumar. The said information was put into a sealed envelope and was given to the Assistant Director, Mr. Rao. There is an endorsement and signature of Mr. Rao under the written down information. He identifies the signature and that is how the information is brought on record at Ex.72. He says that the information/intelligence was given to him personally and orally. Then he corrects himself and says that the intelligence or information was received on telephone. He says that the message was not from Ahmedabad, but was from outstation. He cannot say as to wherefrom the call had come. He says that the person was known to Mr. Denial. He says that the informant told him that he should keep Mr. Denial with him. He says that he has not asked Denial to write down the information as received on the telephone. He says that he had noted down the information within 2/3 minutes. He also says that the information reduced into writing was placed into an envelope and given to Mr. Rao. He admits that the envelope (shwon to him in Court) is not the same in which the information was given to Mr. Rao. He does not know

as to when Mr. Rao had opened the envelope given to him by them. They were not called by Mr. Rao at the time of opening the envelope or sealing the envelope containing Ex.72.

10.3 Despite a close scrutiny, we are not able to identify any material defect or contradiction which may go to the root of the factum of receipt of the information and passing it over to the immediate superior. An attempt is made to contradict the evidence of one witness with the evidence of the other when Denial says that the information was written down by Bakarawala and passed over to the superior or the information was received by him or Bakarawala. It has to be noted that the evidence was recorded after a long lapse of time and minute details may not be remembered by all witnesses and there cannot be any ad-verbatim narration of the incidence. It all depends on the observation power, description power and memory power of the witnesses. The witnesses support each other in material particulars coupled with the fact that there is contemporaneous material (Ex.72) duly signed by the witnesses as well as the superior officer. It would not be appropriate to hold that the evidence on question as to who received the information, whether Bakarawala or Denial Rajkumar would make the entire evidence regarding information suspicious because the information is reduced into writing and signed by both of them. It sounds very natural when Bakarawala says that whatever information received by him was jotted down by him in his own hand writing and then typed out. When an information is received on telephone, it natural that the man giving the information would quickly pass over the information leaving hardly any time for the recipient to note it down in details. One has to scribble it down and then formulate it in in sentences and that exactly appears to have been done in the instant case. Non-availability of such writing will not outweigh the available evidence. The verbal evidence is supported by contemporaneous record. The record gets support of oral evidence in general. A little discrepancy in evidence may be outcome of lapse of memory or even exaggeration or embroidery added by the witness. In our view, the discrepancy does not, in substance, affect its trust worthiness. It would be appropriate to quote what the Hon'ble Apex Court has observed in such situation in paragraph 15 in the case of State of U.P. v. Anil Singh, AIR 1988 SC 1988.

"15. It is also our experience that invariably the witnesses add embroidery to prosecution

> story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

In our opinion, therefore, there is no reason to doubt the evidence of the prosecution regarding compliance of Section 42(2) of the N.D.P.S. Act.

10.4 As regards non-compliance of Section 55, it was contended that there is no evidence regarding safe custody of the muddamal samples as envisaged under Section 55 of the NDPS Act. In this regard, it would be appropriate to consider the provision contained in Section 55, which runs as under :-

> "55. Police to take charge of articles seized and delivered.- An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station."

The language of the Section makes it clear that it applies to a case where the articles seized under the Act are delivered to an officer in-charge of a police station and requires that the officer-in-charge of the police station to allow any officer who may accompany the articles to the police station or who may be deputed for the purpose to affix his seal to such articles or to take

samples of and from them and all the samples so taken shall also be sealed with the seal of the officer in-charge of the police station. In the instant case, the D.R.I. officers have not delivered the material seized to an officer in-charge of the police station. It would be appropriate to note, at this stage, that P.W.-1-Denial Rajkumar has stated that the seized goods were packed in cartons of hardboard separately. He has been cross-examined on this point, but he sticks to his version. In this regard, it would be appropriate to refer to the decision of the Apex Court in case of Karnail Singh v. State of Rajasthan, JT 2000 (10) SC 506, wherein in paragraph 11, the Apex Court observed that section 55 mandates an officer in-charge of the police station to take charge and keep in safe custody articles seized under the Act within the local area of that police station, which may be delivered to him and shall allow any officer who may accompany such article to the police station or who may be deputed for the purpose to affix his seal. It was urged before the Apex Court that, after seizure, the goods were sent to the Superintendent, Central Narcotics Bureau, who, as per law, being in-charge of the police station, has not affixed the seal on the articles and the samples and the whole procedure followed was illegal which entitled the appellant to be acquitted. The Apex Court did not accept the contention observing that it was without substance for the reason that the officer required to affix seal, etc. under Section 55 of the Act would be the officer in-charge of the nearest police station as distinguishable from the officer in-charge of a police station empowered under Section 53 of the Act. In the case before us also, the material was seized by D.R.I. officers and was kept by them in their office till it was forwarded to the F.S.L. and the officer has deposed to the effect that it was kept by him. There is no reason to doubt the safe custody of the muddamal, particularly when the F.S.L. has received the muddamal samples intact without any tampering. There is no allegation of any animosity or strained relations between the appellants and the officers of D.R.I. There is no substance in the contention regarding non-compliance of mandatory requirement of Section 55 of the NDPS Act.

10.4.1 It was contended that the safe custody assumes greater importance as sealing was not properly done which exposed the samples to the possibility of tampering. In this regard, if the evidence is examined, the Panchnama (Ex.77) drawn at the time of seizure in terms states that each of the samples of 5 tablets each was placed in a small polyethylene bag, which was then placed in an

envelope, which was affixed with label signed by both the Panch witness, four accused persons, i.e. accused Nos.3, 4, 5 and 6, and the seizing officer, which was then wrapped/tied with cotton ribbon and was thereafter sealed (with sealing-wax) in a manner that tampering would be impossible without breaking the seal.

10.4.2 Likewise, the residue of the contraband were also put in a hardboard carton, which were then packed with adhesive tape and then tied with plastic strip. They were marked with number so as to retain their identity. It was vehemently argued that the sealing procedure was not proper and left room for tampering with the samples. The seal ought to have been applied in such a manner that it would be on the slip containing signatures of the Panch witnesses and the envelope ought to have been wrapped with paper on all four sides and then tied in a manner that it cannot be tampered. It has not been done as per the learned Advocates for the appellants.

10.4.3 Contrary to this, it was contended by Mr. Pandya that sealing procedure is not prescribed under the NDPS Act or the Rules. The officers have taken all precautions to seal the sample packets in a manner which would leave no room for tampering and it has been categorically stated in the Panchnama. The F.S.L. report also indicates that the samples were received intact. Thus, there was no tampering. If there was any tampering, the report would have indicated the same.

10.4.4 In order that the contentions can be properly appreciated, we had called for the muddamal from the Trial Court and we, ourselves, inspected the same in presence of learned Advocates in the open Court. It was inspected by the learned Advocates also. The learned Advocates for the appellants tried to convince us that tampering would be possible, if a safety razor blade is inserted beneath the flap of the envelope and the envelope is cut, the sample can be removed and/or replaced and the envelope can be again put into original condition by applying gum between the two layers which could have been cut apart and it would not be possible even to know that the envelope has been tampered with. This was stated because the slip containing signatures of the Panch witnesses, the accused and the officer concerned was wrapped around the envelope but not on the opening sides.

10.4.5 We had inspected the envelopes and prepared a note which was signed by us and forms part of the record. The note runs as under :-

"In light of the contentions raised regarding sampling, sealing, handling and possibility of tampering of muddamal, we had called for the samples of the contraband muddamal from the trial Court.

All learned Counsel for the appellants as well as Standing Counsel for Director of Revenue Intelligence Mr. Pandya are present.

We have inspected the muddamal sample packets. We find that each packet is wrapped into a paper-sheet, which carries signatures of the accused persons as well as the panch witnesses and the Seizing officer Mr. Sarvaiya. That paper is pasted around the envelope with gum. Gum is applied almost all over the back of the paper. There after the entire packet is tied with a cotton ribbon and the ends of the cotton ribbon are put under wax seal.

After inspection of the packets it was contended and tried to be demonstrated that tampering is possible. It was suggested to us that the ribbon put around the sides of the envelope can be easily removed and the samples can be tampered with from opening or bottom sides. It was contended and suggested to be demonstrated that after sliding off the cotton ribbon, the envelope can be easily cut by inserting a safety razor blade under the flap and it can again be resealed by applying gum between the two layers of that side. It was contended by learned Standing Counsel for Director of Revenue Intelligence Mr. Pandya that this would not be possible because the envelope is not a simple paper envelope, but is a cloth backed paper envelope.

We have inspected the samples closely in light of the contentions raised. This note is prepared to keep on record what was found by us during the course of hearing at the time of inspection of the muddamal. We shall record our findings during the course of dictation of the judgment in these appeals. This note shall be kept on and shall form part of the record of this case. Original to be kept on record of Criminal Appeal No.610/98 and a copy of this order be kept

on record of rest of the appeals.

Date: 24.12.2002"

We find that the envelopes were wrapped with slips containing signatures of the Panch witnesses, the accused and the Seizing Officer. Gum is applied almost all over the back of the paper and, therefore, the paper has been properly glued to the envelope, which would rule out the possibility of any replacement of the envelope. It is true that the ribbon put around the sides of the envelope could be easily slided off without breaking the seal as only one seal is applied at the ends of the cotton ribbon. However, we do no find any substance in the much pursued contention that, after sliding off the cotton ribbon, the envelope can be easily cut by inserting a safety razor blade under the flap and can easily be replaced by applying gum between the two layers of that side. The reason is that the paper containing signatures of Panch witnesses is wrapped almost till the edge of the envelope which would make inserting safety razor blade under the flap almost impossible without damaging the paper wrapped around the envelope. We also find that there is no substance in the contention that it can be resealed by applying gum between the two layers. The reason is that the envelope containing the sample is a cloth backed paper envelope and if it is cut from one side, that would leave the threads visible from the cut edge of the envelope, reflecting tampering of the muddamal envelope. Therefore, we do no find any substance in the contention that the sealing was not properly done and it exposed the samples to possibility of tampering. It was contended that possibility of tampering itself is sufficient for grant of benefit to the accused. Since we do not find any tampering or possibility of tampering, the question whether possibility itself is sufficient to grant benefit to the accused is not required to be gone into by us.

10.4.6 It was contended that there was no evidence regarding the safe custody of the muddamal. In our opinion, though section 55 is not attracted, it would be appropriate to examine the question as to whether the muddamal was protected against possibility of tampering. In this regard, there is evidence of P.W.4-Mr. Sarvaiya (Ex.78), who says, in terms, that the sealed muddamal packets were with him till he handed over in the office. There is evidence to show that the said sealed packets were forwarded to F.S.L. by P.W.9-Rupam Kapoor, with forwarding letter under his signature. He has been

examined at Ex.160. He says that he had received the samples from Sarvaiya and then he forwarded it to D.R.I., Ahmedabad, for being sent to F.S.L., through Mr. Dimri, who is an officer of D.R.I., who is examined at Ex.183. Mr. Kapoor has been cross-examined and he says that till he handed over the samples to Mr. Dimri, the samples were in his office and were sent in a sealed condition. He, of course, said that he had not made any entry in any Register.

10.4.7 Witness-Vimalkumar Dimri (Ex.183) says that he was given a forwarding letter by Mr. Kapoor, addressed to F.S.L. along with four sealed packets. He had taken the letter and the samples to the D.R.I. office, at Ahmedabad and handed it over to Chetan Patel.

10.4.8 P.W.5-Chetan Patel is examined at Ex.146. He says that after receiving the samples from Mr. Dimri along with the forwarding letter written by Mr. Kapoor, he handed over the same to the F.S.L. He had received a receipt from the F.S.L. regarding the receipt of the muddamal and the forwarding letter, which had forwarded to Mr. Kapoor, at Jamnagar, by communication dated 18.5.1994, which is at Ex.150. The receipt issued by F.S.L. is at Ex.151.

10.4.9 The above pieces of evidence clearly establish a link of safe and untampered journey of muddamal from the point of seizure till it reaching the F.S.L., which leaves no scope for suspicion regarding tampering of the muddamal. However, to make it doubly sure, we have examined Ex.151, which is the receipt issued by the Assistant Director, F.S.L., Ahmedabad, which says that 46 packets were received in a sealed condition and, therefore, we do not find any substance in the contention regarding tampering or possibility of tampering of muddamal.

10.4.10 An attempt was made to raise a suspicion in respect of number of packets because of reference to four packets and 46 packets at different places. This doubt gets cleared because the Panchnama says that the samples of contraband were drawn from each of the drums and they would make 44 packets and two samples of oil were drawn and they would make two packets and the total comes to 46 packets. It appears that, at some stage, for convenience, 22 packets of contraband seized from each of the trucks were put in one envelope each making two envelopes and two samples of oil, making total of 4 packets and, therefore, at two different places, there is slight difference in the number of packets indicated.

But this variance or discrepancy cannot be considered sufficient to raise a reasonable doubt about genuineness of muddamal samples which would go to the root of the matter. As we have seen, the Panchnama speaks of 46 packets and, therefore, reference to four packets made by Chetan Patel in his examination-in-chief that he was given four packets by Mr. Dimri, probably, is the outcome of the sample packets having been put in an envelope for convenience of carriage. The doubt canvassed by the learned Advocates regarding possibility of tampering and evidence being not reliable has no substance.

10.4.11 The appellants' main case is of false implication. The appellants have not challenged the report of FSL that the samples were of contraband Mandrax. The case of the defence regarding alleged defects in sampling, sealing and possibility of tampering will, therefore, lose significance.

10.5 It was contended that there is non-compliance of Section 57 of the NDPS Act. Section 57 of the NDPS Act requires the person making any arrest or seizure under the Act to make a full report of the particulars of such arrest and seizure to his immediate official superior within 48 hours next after such arrest or seizure. It was contended that, the prosecution has tried to show compliance of Section 57 by producing a report at Mark 58/44, which the Trial Court has refused to take on record as it was not coming from proper custody. It was contended that, even if that report is considered, it only speaks of seizure and not arrest. It was contended that there is absolutely no report regarding arrest of any of the 10 accused persons. It was contended that the requirement of Section 57 is mandatory and that having not been complied with, benefit should go to the accused. In support of this contention, reliance was placed on the decision in the case of Mohinder Kumar v. The State, Panaji, Goa, AIR 1995 SC 1157 and State of Punjab v. Balbir Singh, (1994) 3 SCC 299.

10.5.1 The above contention on behalf of the appellants was countered by learned Additional Standing Counsel, Mr. Pandya, by submitting that Section 57 is not mandatory but directory and only if there is total non-compliance, it may help the defence. Mr. Pandya submitted that the Trial Court has committed an error in not accepting the communication/report Mark 58/44. Mr. Pandya submitted that the witness-Mr. Sarvaiya is part of the D.R.I. office and he will have an access to the office and, if

he produces the same, it cannot be said that it has not come from proper custody. That apart, Mr. Pandya submitted that, when the execution was proved, the document ought to have been accepted on record of the case and the Trial Court ought to have then considered its evidential value and then taken a decision to rely on the same or not. He, therefore, urged that the document may be exhibited, at this stage.

10.5.2 P.W.4-Prafulsinh Sarvaiya (Ex.78), in paragraph 26, refers to Mark 58/44 and says that he had made a report regarding seizure to Deputy Director of D.R.I., Ahmedabad, on the 13th May, 1994 by that letter. He also says that there is short signature of Mr. R.K. Singla, Deputy Director, D.R.I., Ahmedabad. The Trial Court observed that the letter can be produced only through the recipient and, therefore, it upheld the objection raised by the defence that it is not coming from proper custody.

10.5.3 It would be appropriate to note, at this stage, that the original complainant is the D.R.I. office, Ahmedabad. Exhibit 58, the list with which the communication is produced at Mark 58/44 has been produced by learned Special Public Prosecutor, who represents the complainant and, therefore, it could not have been said that it is not coming from proper custody. The document was only sought to be proved by prosecution through Mr. Sarvaiya, who had made the report and the prosecution could successfully do that as can be seen from the evidence of Sarvaiya. The Trial Court, in light of evidence on record could not have refused to exhibit the documents on the ground recorded in the order in question.

10.5.4 The document Mark 58/44 has been duly proved through P.W.4-Sarvaiya when he says that it is the communication sent by him to the Deputy Director and when he identifies the signature of his Deputy Director in the margin. The document, therefore, ought to have been taken on record formally by giving it an exhibit. The Trial Court could have then appreciated its evidential value. In our opinion, the document Mark 58/44 requires to be taken on record and given an exhibit and, therefore, we direct that Mark 58/44 be given an exhibit in the record of the Trial Court, which will be Exhibit 218.

10.5.5 Now, coming to the contention regarding compliance of Section 57, it is true that Section 57 requires a report to be made after arrest or seizure made under the Act. In the instant case, we find that Mark

58/44 is report regarding seizure. However, it is silent on the aspect of arrest. The prosecution has not adduced any evidence to show that a report was made to the superior officer after arrest of any of the accused persons. The Court is now, therefore, required to examine the effect of this partial compliance of Section 57. Reliance was placed by learned Advocates for the appellants on the decision in the case of Mohinder Kumar v. The State, Panaji, Goa, AIR 1995 SC 1157, wherein the Apex Court observed that "In Balbir Singh's case, it has been further stated that the provisions of Sections 52 and 57 of the Act, which deal with the steps to be taken by the officer after making arrest or seizure are mandatory in character. In that view of the matter, the learned counsel for the State was not able to show for want of material on record, that the mandatory requirements pointed out above had been adhered to. The accused is, therefore, entitled to be acquitted". However, the Apex Court has, subsequently again examined the question in the case of Sajan Abraham v. State of Kerala, AIR 2001 SC 3190, wherein, in paragraph 12, it is observed that requirement of Section 57 is not mandatory in nature. When substantial compliance has been made, it would not vitiate the prosecution case. The Apex Court further went to observe in paragraph 13 that in State of Punjab v. Balbir Singh, (1994) 3 SCC 299, the Court held that "provisions of Section 55 and 52 which deal with the steps to be taken by the officer after making arrest or seizure under Section 41 to 44 are by themselves not mandatory. It was also observed that, if there is substantial compliance, mere absence of any such report cannot be said to have prejudiced the accused.

10.5.6 In Gurubax Singh v. State of Haryana, AIR 2001 SC 1002, the Apex Court observed in paragraph 9 as under:-

> "9.....It is true that provisions of Sections 52 and 57 are directory. Violation of these provisions would not ipso facto violate the trial or conviction. However, I.O. cannot totally ignore these provisions and such failure will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the article." (emphasis supplied)

10.5.7 With the above legal propositions set out by the the Apex Court, it clearly emerges that the requirement of Section 57 is not mandatory. Non-compliance of

requirement of Section 57 will not ipso facto vitiate the Trial or conviction. However, it cannot be totally ignored. The prosecution would suffer if there is total non-compliance of Section 57. In the instant case, a report has been made at Mark 58/44, within the stipulated time, indicating seizure. Of course, there is no reference to arrest. In our opinion, there is substantial compliance of requirements of Section 57 when the report Mark 58/44 is made. Prejudice to the appellants due to this partial compliance is neither contended nor indicated by the appellants in any manner. There is no dispute regarding factum of arrest of the accused. No dispute or animosity between the accused and the officers of D.R.I. is pleaded. In our view, therefore, there is substantial compliance of Section 57. It cannot be said that there is total non-compliance. The defence is, therefore, not entitled to any benefit.

10.6 It was vehemently argued that the conviction is founded mainly on statements under Section 67 of the NDPS Act, which suffer from various defects. The main contention was that the statements cannot be made the sole basis of conviction and, in this regard, reliance was placed on the decision in the case of Mohd. Aslam Khan v. Narcotics Control Bureau and Another, (1996) 9 SCC 462. This contention was countered by placing reliance on K.I. Pavunny v. Assistant Collector (HQ), Central, Excise Collectorate, Cochin, (1997) 3 SCC 721 and it was contended on behalf of the respondents that there is no rule of law which requires that conviction cannot be based on sole basis of such statements, but it is only a rule of prudence to look for supportive evidence or circumstances. It was also contended that there are series of circumstances and voluminous evidence to support the case against the accused persons for their conviction.

10.6.1 In Mohd. Aslam Khan (supra), the Apex Court set aside the conviction in view of the fact that the confessional statement of the appellant was retracted and that there was no other evidence. However, in the case of K.I. Pavunny (supra), the Apex Court considered the question whether statement under Section 108 of the Customs Act can be the sole basis of conviction. After considering various decisions, the Apex Court observed in paragraph 25 as under :-

"25. It would thus be seen that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution

> case or to make the same basis for conviction of the accused. Practice and prudence require that the court could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The Court is required to examine whether confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether such statement is true. If the Court on examination of the evidence finds that the retracted confession is true, the part of the inculpatory portion could be relied upon to base the conviction. However, prudence and practice require that court would seek assurance getting corroboration from the other evidence adduced by the prosecution." (emphasis supplied)

10.6.2 It is, thus, clear that conviction can be founded on retracted confessional statement of accused. If the Court finds that the statement was voluntary and it was true, then even if it is retracted, the inculpatory statement could be relied upon to base conviction. At the most, the Court would be required to examine the evidence and look for circumstances or evidence to reassure itself about the confessions made. In the instant case, there is ample evidence regarding involvement of accused Nos.3, 4, 5 and 6 in a narcotic crime, as they are found to be transporting mandrax tablets in large quantity. There is oral evidence of officers of D.R.I. and Panch witnesses which connect them with the contraband. Their statements under Section 67 are only additional factors to lend support to the prosecution case.

10.6.3 So far as other accused persons are concerned, there is a series of circumstances which indicate their involvement and lend support to their own statements. The information/intelligence received was reduced into writing and reported to the superior officer. That part stands established by contemporaneous material. The report is also on record supported by oral evidence of witnesses. On basis of the information, a watch was

organized, which, ultimately, culminated into seizure of the contraband. The report was found to be correct in respect of registration number of the vehicles involved, persons involved in the trafficking (accused Nos.3, 4, 5 and 6) and the manner in which the drums were concealed under cover cargo. These circumstances indicate that this was a pre-planned and well organized crime. The drums were specially fabricated to facilitate the clandestine movement of the drug. The volume of the narcotic drug seized is also indicative. Some of the accused persons have their antecedents in criminal activities and last, but not the least, accused Nos.1, 7, 8, 9 and 10 were arrested after a long time. These circumstances collectively lend support to the evidence in form of statements of the accused under Section 67 of the NDPS Act. The contention, therefore, that the statements under Section 67 are the sole basis of conviction and that they cannot be the sole basis of conviction is devoid of merits and cannot be accepted.

10.6.4 Statements under Section 67 were assailed on ground of they having been obtained under duress. To show duress, it was contended that repetitive statements were recorded till an inculpatory statement was given by the accused. That the statements were recorded after continued illegal detention by officers of D.R.I. It was contended that the statements are subsequently retracted. It is indicated that the accused were meted out with ill-treatment and, therefore, the statements being not freely or voluntarily given, they cannot be relied upon in light of Section 24 of the Evidence Act and Article 20(3) of the Constitution of India. Reliance was placed on the decisions of the Apex Court in State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125, Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600 and Ramanlal Bhogilal Shah and Another v. D.K. Guha and Others, (1973) 1 SCC 696. The argument was countered by the respondents by relying on Section 177 of the Indian Penal Code and the decisions in the cases of K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin, (1973) 3 SCC 721 and Bhagwan Singh v. State of Punjab (I), AIR 1952 SC 214.

10.6.5 There is no dispute that a series of statements were recorded from many of the accused persons. But that by itself is not a ground to infer that the statements were given under duress. It cannot be overlooked that persons involved in such organized criminal activity would not readily volunteer to give inculpatory statement. In such situation, a tactful and specialised method of interrogation may be required to be resorted to

which may help in bringing out the truth and, therefore, repetitive statements by themselves cannot vitiate the statements with duress. This by itself will not affect the prosecution case.

10.6.6 It was contended that the statements were recorded after a prolonged detention. It was submitted that, though on every occasion the accused were served with summons for giving statements under Section 67 of the NDPS Act, it was only an exercise undertaken by the D.R.I. officers to conceal the prolonged illegal detention of the accused. Ill-treatment has also been alleged. However, it would be appropriate, at this stage, to record that the retraction has come at a belated stage at the trial from the accused except accused Nos.1, 7 and 8, who have made a complaint of ill-treatment and use of physical force before the Magistrate. It would be relevant to note that the defence has not adduced any evidence in support of the allegation of duress, use of physical force or inducement. In view of the decision of the Apex Court in Bhagwan Singh v. State of Punjab (supra), the burden is on the person making the allegation of threat or duress to substantiate them. If he chooses to rely on evidence which does not satisfy the Court, he must suffer the same fate as every other person who is unable to discharge an onus which the law places upon him. Excepting bald allegation regarding ill-treatment and prolonged detention, no material is produced by the defence to support its version. Although it has come on record that, on a complaint being made to the Chief Judicial Magistrate, the accused was sent to doctor for medical check up. But what happened, thereafter, whether the allegation made by him was, in fact, found to be correct by the doctor or not has not come on record and, therefore, the case of the defence that the statements under Section 67 were not free and voluntary and suffer from the vice of duress cannot be accepted.

10.6.7 As regards the contention that the accused persons were kept under illegal detention for prolonged time, putting them under psychological pressure, and, therefore, the statements not being free or voluntary, it has to be observed that, in this regard also, excepting bald statement, no material in support of the allegation is produced. Against this, there is contemporaneous material in the form of summons issued by the D.R.I. authorities to the accused persons on various occasions as and when they were required to be interrogated till their arrest. Undisputedly, the summons carry signature of the accused to show proper service. In absence of

evidence or material to the contrary, there is no reason to doubt the authenticity and genuineness of such contemporaneous record maintained by the office of D.R.I. No ill-will or animosity is even alleged. We find no substance in this contention. In this regard, it would be appropriate to refer paragraph 11 of the judgment in the case of Poolpandi Superintendent, Central Excise, (1992) 3 SCC 259, where the Apex Court observed "the purpose of inquiry under the Act and other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the department are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company". (emphasis supplied).

The said observations were again considered and reiterated by the Apex Court in paragraph 15 in the case of K.I. Pavunny (supra). Therefore, we do not find any substance in the allegation regarding prolonged detention of appellants before recording statements under Section 67 affecting its free nature.

10.6.8 It was contended that, apart from threat/ill-treatment meted out to the accused persons at the time of interrogation, administration of threat emerges from the record of the D.R.I. authority. Every statement under Section 67 of the Act indicates that the accused was given to understand that he is bound to speak truth and if he fails in doing so, he can be prosecuted under I.P.C. It was contended that Section 67 does not contemplate any such provisions unlike Section 108 of the Customs Act and, therefore, the projected legal action emanates from the officer and not from the law. It, therefore, assumes form of a threat. It was also contended that Section 67 is an enabling provision and it empowers an officer to call for information from any person or to require any person to produce or deliver any document or to examine any person acquainted with the facts and circumstances of any case under the Act. It was, therefore, vehemently argued that it does not cast any duty on the person called upon by the officer to give statement to reveal the correct information unlike the provisions contained under Section 108 of the Customs Act. This argument was countered by relying on Section 177 of the Indian Penal Code. It was submitted that in light of Section 177 of the Indian Penal Code, which

requires the persons to reveal correct fact, if he fails in doing so, he is liable to be prosecuted. Difference in language between Section 67 of the Act and Section 108 of the Customs Act will be of no consequence. It was submitted that the duty is implicitly cast on the person who is interrogated under Section 67 by the officer to reveal correct facts. The right of the officer given by Section 67 of the Act will be frustrated if this duty of giving correct information is not read in the provision and the provision contained in Section 67 would be rendered nugatory.

10.6.9 We have considered the contentions in this regard. In light of Section 177 of the Indian Penal Code, it is clear that, if a person, who is legally bound to furnish information on any subject to any public servant, fails to do so, he is punishable with simple imprisonment for a term which may extent to six months and failure to give information legally bound to give, which is required for the purpose of preventing commission of an offence, is made punishable with imprisonment for a term which may extend to two years. It was contended that Section 177 casts a duty on a person 'legally bound' to furnish information. The term legally bound has been defined in Section 43 of the Indian Penal Code, which runs as under :-

> "43. The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action and a person is said to be "legally bound to do" whatever it is illegal in him to omit."

Therefore, it was contended that the accused persons called upon to give information under Section 67 cannot be said to be legally bound to give correct information.

10.6.10 Section 177 clearly provides that, if a person who is legally bound to furnish information on any subject to any public servant furnishes information which is not correct with knowledge, is liable to be punished. Differently put, any person who is called upon by a public servant to furnish information is found to furnish correct information. It is, therefore, a legal obligation to furnish correct information. Now, if Section 43 is read, it says that a person is said to be legally bound to do whatever it is illegal in him to omit. Therefore, when a person is called upon by a public servant in exercise of a power vested in him by Law (Section 67) to give correct information, it would be illegal in him to omit to give correct information. If

he fails to give correct information or gives incorrect information with knowledge, he can be said to have illegally omitted to give correct information. In the case on hand, the officers of D.R.I. are empowered under Section 67 to call upon any person to furnish correct information or to examine such person regarding facts and circumstances of the case. By necessary implication, the person so called upon is bound to render correct information and give correct statement and, if he fails so to do, he can be said to have illegally omitted to do a thing which he is legally bound to do. The law makers, by enacting Section 67, can certainly be said to have intended to cast such a duty implicitly on persons called upon to give information to officers exercising powers under Section 67 of the NDPS Act with a view to facilitate the investigation. The contraventions and offences of such type are committed in an organized manner under absolute secrecy and, therefore, in order that such offences are detected and or prevented, the officers are empowered to have correct information. Therefore, apart from provisions of Section 177 and 43 of the Indian Penal Code, a duty is implicitly, cast on such person to give correct information. It is not possible to accept the contention that Section 67 only empowers the officer to call for the information and does not require such person called upon to give correct information. If this interpretation is accepted, Section 67 of the Act would be rendered toothless and would lose efficacy. The law makers could not have intended such a provision. In our opinion, although the language of Section 67 is not explicit, implicitly, it casts a duty on person so called upon to give correct information. Section 177 of the Indian Penal Code will also apply with full force to such a situation. It therefore cannot be accepted that the statements recorded in exercise of power under Sec.67 of the Act were obtained under threat of legal action emanating from the officers recording the same. As a consequence, it can not be said to be vitiated on that count. The contention that statements were not voluntary cannot be accepted. It would also be appropriate to note that even while retracting their statements none of the appellants has raised this ground. This contention is raised for the first time before this Court and deserves rejection and is rejected.

10.6.11 Another contention that was raised to assail the statements under Section 67 was that they are hit by Section 24 of the Evidence Act and Article 20(3) of Constitution of India. It was contended that, whatever is stated by such person would be irrelevant in light of Section 24 of the Evidence Act. Reliance was placed on

State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125, Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600 and Ramanlal Bhogilal Shah and Another v. D.K. Guha and Others, (1973) 1 SCC 696. In reply, it was contended that, a protection under Article 20(3) of the Constitution would be available or Section 24 of the Evidence Act would be attracted only after the person whose statement is recorded formally becomes an accused. For this purpose, reliance was placed on the case of K.I. Pavunny (supra).

10.6.12 In Balkishan A. Devidayal (supra), it was held in paragraph 17 that, only a person against whom a formal accusation of the commission of an offence has been made can be a person accused of an offence within the meaning of Article 20(3). Such formal accusation may be specifically made against him in an F.I.R. or a formal complaint or any other formal document or notice served on that person which, ordinarily, results in his prosecution in Court. It was, therefore, contended that, though names of all the accused were not shown in the complaint as such, allegations against accused Nos.8, 9 and 10 were made in the body of the complaint and, therefore, they were accused as contemplated under Article 20(3) of the Constitution. However, in a subsequent judgment in case of K.I. Pavunny (supra), the Apex Court (incidentally, a larger Bench) considered this question again and observed in paragraph 17 that a person becomes accused of an offence only when a complaint is laid by the competent Customs Officer in the Court of competent jurisdiction or Magistrate to take cognizance of the offence and summons are issued. Thereafter, he becomes a person accused of the offence. It was also observed in that very paragraph that, though Customs Officer is an authority within the meaning of Section 24 of the Evidence Act, by reason of statutory compulsion of recording statement or the accused giving voluntary statement pursuant to his appearing either after issuance of summons or after his surrender cannot be characterized to have been obtained by threat, inducement or promise. Both the above conclusions arrived at by the Apex Court would be squarely applicable to the present case. In the instant case, the statements have been recorded prior to the taking of cognizance and/or issuance of summons and, therefore, they are prior to the appellants' becoming accused of an offence. Similarly, the officers of D.R.I. can be considered at par with Customs Officers and, therefore, statements cannot be characterized to have been obtained by any threat or inducement or promise. In light of the above legal position as applicable to the facts of the present case, the protection of Article

20(3) or Section 24 of the Evidence Act will not be available to the Appellants.

10.7 Coming to the contention regarding the Panchnama being not reliable on the ground of signatures of the Panch witnesses were not obtained at the place where the trucks were intercepted; that presence of Panch witnesses during sampling procedure is doubtful; and that there is no compliance of Section 50, we find that the Panchnama is a continuous and running Panchnama, which was recorded from the time when the trucks were intercepted and every page of the Panchnama bears signature of the Panch witnesses as well as the accused persons and the Seizing Officer. We find that it is recorded in the Panchnama itself that because it was not practicable to undertake inspection of the drums on the road for want of equipments, the trucks were taken to D.R.I. office at Jamnagar. It is not as if the Panchnama was concluded at the place and, therefore, non -signing of the Panch witnesses at the place of incident before leaving for Jamnagar will not affect the authenticity or reliability of the Panchnama. It has to be also remembered that the Panch-witnesses have remained present throughout, and that aspect remains established. There is no substance in this contention and is, therefore, rejected.

10.8 Much was argued about evidence on presence of Panch witnesses while sampling procedure was done at D.R.I. office at Jamnagar. The said Panch is P.W.-12 (Ex.168). His deposition indicates that when the trucks were intercepted, drivers of both the trucks, on being asked, disclosed that the trucks carry wheat. They did not say anything about the drums. In all the drums containing mandrax tablets, there were specially made compartments. The drums were found to be concealed under wheat bags. The Panch witness has been cross-examined. He says that they had stayed in the D.R.I. office in the night of 11th May. He says that he was sitting in the room till he signed the Panchnama. He does not remember as to exactly how many signatures he had made, how may seals were affixed and on how many envelopes. He says that after reaching the D.R.I. office at Jamnagar, they were taken into a room. He says that the barrels were opened on the 11th and the 12th with the help of labourers. They were opened in the office of D.R.I. It was, therefore, contended that, though as per the officers, the procedure was carried out in the compound by the D.R.I. office, at Jamnagar, this witness says that it was carried in the office of D.R.I. office, Jamnagar and, therefore, his presence is doubtful. In our opinion, this type of technical interpretation cannot

be adopted when a layman deposes before a Court. No clarification is sought from the witness as to what he meant by office - whether he meant only the room or the entire office or office including its precincts. His going to the room on reaching Jamnagar cannot be read to mean he remained in the room all throughout. The Panchnama was drawn in presence of accused Nos.3, 4, 5 and 6 and copy thereof was given to them immediately, which adds to the authenticity of the Panchnama and saves it from the allegation of any tampering or manipulation in the Panchnama. The aspect regarding copies being given to accused Nos.3, 4, 5 and 6 is revealed from deposition of P.W.4-Prafulsinh Sarvaiya. He says that copy of Panchnama was given to accused No.3, 4, 5 and 6 after obtaining a receipt from them, which is annexed to the Panchnama. The receipts are Ex.83, 84, 85 and 86. The contention regarding presence of Panch-witnesses at the time of drawal of samples being doubtful cannot be accepted.

10.9 The procedure for search and seizure was also assailed. It was contended that mandatory requirements under Section 50 of the Act have not been complied with while conducting search of person of accused Nos.3, 4, 5 and 6. It appears that, there is no material to indicate compliance of Section 50 of the NDPS Act while conducting search of person of accused Nos.3, 4, 5 and 6, but that does not put the appellants to any advantage for the reason that nothing incriminating under the NDPS Act is found from person of accused Nos.3, 4, 5 and 6 and, therefore, no prejudice can be said to have been caused. The contraband is found from bed of the Truck from underneath wheatbags and for that requirements of Sec.50 of the Act are not required to be complied with. The contention regarding non-compliance of requirements of Sec.50 will not benefit the appellants case.

10.9.1 Contentions regarding improper sealing, want of evidence of safe custody and possibility of tampering have already been discussed and, therefore, therefore, the contention regarding defect in search and seizure cannot be accepted.

10.10 Next, is the contention regarding conscious possession of the contraband. It is contended that accused Nos. 3, 4, 5 and 6 are the only persons who were in the trucks when the trucks were intercepted and were found to carry the contraband. But none of them is established to have conscious knowledge about presence of the contraband mandrax in the trucks. All that is revealed even from their own statements under Section 67

of the NDPS Act is that some illegal material was being transported and, therefore, they could not have been convicted under the NDPS Act. In this regard, if the statements of accused Nos.3, 4, 5 and 6, as recorded under Section 67 of the NDPS Act, are seen, statement of Dinesh Alabhai Dhruv (accused No.3) dated the 14th May, 1984, clearly indicates that he was suspicious about the drums containing contraband mandrax tablets. It is also to be noted that accused No.4-Jusab Razakali Sidi alias Dada, in his statement dated the 15th May, 1994, hatched a doubt about the barrels containing a dangerous contraband. His statement reveals that he is involved in smuggling activities for a long time. The statements of accused Nos.5 and 6 also indicate that the way in which barrels were brought from Valsad Industrial Estate area to Junagadh and then the way in which they were sought to be transported to Mangalore had made them suspicious about the contents of the barrels. It is not possible to accept that they had, despite suspicion, agreed to transport the illegal goods without making any inquiry and without assessing the risk that they were running. The contention about the lack of conscious knowledge about the presence of mandrax tablets in the barrel is only an afterthought. There is ample evidence in the form of deposition of the officers of D.R.I. and the Panch witness to indicate that accused Nos.3, 4 5 and 6 were in the trucks. Their conduct of not disclosing presence of barrel in the trucks and disclosing existence of only wheat indicates that they were consciously transporting the contraband. The modus operandi adopted in taking delivery of the contraband and its transport, so also the antecedents of some of the accused viewed collectively are relevant and competent factors to rejet the contentions regarding lack of knowledge about nature of contraband. The contention is, therefore, rejected.

10.11 The quality of investigation was much commented upon. It was stated that the D.R.I. officers have not bothered to go to the root of the source of manufacture and supply of the mandrax tablets. They have also not prosecuted persons against whom there was material to implicate them and, therefore, the investigation is not of a quality upto the mark. This contention cannot be accepted for the reason that the foregoing discussion clearly reveals that there is cogent and reliable material to establish nexus of the accused persons with the crime and non-probing into the source of supply or non-prosecution of persons against whom there is material by itself cannot help the accused persons unless a prejudice is caused to the accused.

10.11.1 It was also contended that, independent evidence, though available, was not collected by the D.R.I. officers which could have supported the prosecution story as a whole including involvement of the accused. It was contended that evidence regarding hotel where accused stayed under fake name, the purchase of diesel from petrol pump, etc. is not collected. In our considered opinion if there was no other evidence or if the evidence was not wholly trustworthy, want of such corroborative evidence might have made a difference. But if the evidence as it is seen, want of collection of such evidence will not make any difference so far as the case of the prosecution is concerned. If the evidence was collected, it would have only added more credence to existing evidence. Its non-collection would not affect or reduce the reliability, acceptability or authenticity of evidence on record.

10.11.2 It was contended that statements of D.R.I. officers, who were party to the prosecution, are not recorded and not supplied to the accused persons before the witnesses were examined in Court. The accused persons, therefore, did not know what the witnesses are going to depose against them and, therefore, a prejudice is caused. It was contended on behalf of the respondents that the officers of D.R.I. are not police officers and they cannot exercise the powers of Investigating Police Officer. We find substance in the contention of respondents. The prosecution is launched on basis of a private complaint by D.R.I., Ahmedabad. The officers of D.R.I. cannot be considered as Police Officers investigating F.I.R. and, therefore, are not expected to record statements of witnesses, as envisaged under Section 161 of the Code of Criminal Procedure. It appears that this contention is raised, for the first time, before this Court. No objection was raised in this regard during the conduct of trial . The contention is therefore rejected.

10.11.3 It was lastly contended that the charge, the evidence and the conviction on that basis cannot go together. Bone of contention is that the charge is on basis of conspiracy hatched along with Haji Ismail of Dubai. But no evidence is produced in this regard and he is not before the Court. Therefore conviction for conspiracy is not legal and proper.

Though attractive, the contention cannot be accepted because the evidence on record clearly establishes involvement of all the accused persons in the conspiracy and subsequent action. May be Haji Ismail is

not before the Court, but lack of evidence to connect him with present accused persons cannot exonerate the accused persons. No prejudice is shown by the accused persons on this account. This plea does not appear to have been taken before the Trial Court. The contention is, therefore, rejected.

10.12 We have given a close scrutiny to the record and proceedings in light of the contentions raised and, for the foregoing reasons, we do not find any merit in any of the contentions raised by the appellant-convicts, which would call for any interference in the judgment impugned. No other contention was raised to assail the judgment.

11. Learned Advocate Mr. Jhala as well as Mr. Ahuja made an alternative submission that the sentence imposed on the accused-appellants is unduly harsh, disproportionate and discriminatory. Therefore, if the Court finds that conviction is rightly recorded, then the sentence may be reduced. We find no special reasons for interfering with the quantum of sentence. The learned Judge has considered all the contentions raised before him and has used his judicial discretion. Nothing is shown to indicate improper exercise of judicial discretion by learned Trial Judge. The appellants are found to be involved in drug trafficking on a large scale. Some have antecedents of smuggling activity. If drug menace is to be curbed, persons proved to have been involved therein need to be sternly dealt with. In our opinion, no interference is called for even for quantum of punishment.

12. The appeals must fail and are dismissed. The judgment and order of conviction and sentence passed by the learned Additional City Sessions Judge, Ahmedabad, in Sessions Cases No.236 of 1994, 72 of 1995, 297 of 1995 and 160 of 1996, on May 14, 1998, is hereby confirmed.

[A. L. DAVE,J.]

[AKSHAY H. MEHTA,J.]

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